

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
2 THIRD JUDICIAL DISTRICT AT ANCHORAGE
3

4 JULIE CARTER and SHARON,)
5 CARTER, as Co-Guardians for)
6 TIMOTHY CARTER,)
7) Plaintiff,)
8 vs.)
9 PATRICK MARTINEZ, M.D.; CAROL)
10 HUMPHRY, M.D.; ESTHER LEE, M.D.;)
11 and BRIAN A. TRIMBLE, M.D.,) Defendants.)
12) Case No. 3AN-17-09282 CI

COPY
Original Received
SEP 21 2017
Clerk of the Trial Courts

13 COMPLAINT

14 COMES plaintiff, through counsel, the law firm of Dillon &
15 Findley P.C., and for his respective causes of action, alleges
16 as follows:

17 1. Plaintiff Timothy Carter, by and through co-guardians
18 Julie and Sharon Carter, brings this action. During all
19 relevant times, plaintiff Timothy Carter was a resident of
20 Bethel and Anchorage, Alaska.

22 2. Defendant Patrick Martinez, M.D. is a medical doctor
23 who is licensed by the State of Alaska and has been, during all
24 relevant times alleged herein, a resident of Bethel and/or
25 Eagle River, Alaska.

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1 3. Defendant Carol Humphry, M.D. is a medical doctor who
2 is licensed by the State of Alaska and has been, during all
3 relevant times alleged herein, a resident of Vancouver,
4 Washington.

5 4. Defendant Esther Lee, M.D. is a medical doctor who
6 had a physician temporary permit from the State of Alaska and
7 has been, during all relevant times alleged herein, a resident
8 of Anchorage, Alaska.

10 5. Defendant Brian A. Trimble, M.D. is a medical doctor
11 who is licensed by the State of Alaska and has been, during all
12 relevant times alleged herein, a resident of Bethel and/or
13 Anchorage, Alaska.

14 6. Jurisdiction in this Court is proper under
15 AS 22.10.020. Venue is proper under AS 22.10.030 and Alaska
16 Rule of Civil Procedure 3.¹

19 1 This case involves care received at the Yukon-Kuskokwim
20 Delta Regional Hospital and the Alaska Native Medical Center.
21 It is likely that some if not all of the providers named were
22 federal employees at the time of the care rendered to
23 Mr. Carter and their care is governed by the Federal Torts
24 Claims Act ("FTCA"). A proper administrative Form 95 has been
25 filed to toll the statute of limitations for the federal
action. However, federal case law does not protect the state
statute of limitations for any healthcare provider who is not
an employee of the federal government under the FTCA. Since
there is no way to ensure that the healthcare providers who
provided care to Mr. Carter were federal employees before the
expiration of the state statute of limitations, this Complaint

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FACTUAL BACKGROUND

7. Timothy Carter was brought to the Emergency Department at the Yukon-Kuskokwim Delta Regional Hospital in Bethel, Alaska on September 22, 2015 by ambulance.

8. Mr. Carter was unable to walk, was vomiting, dizzy and felt weak. He denied abdominal pain and headache.

9. Mr. Carter's history revealed type 2 diabetes, hypercholesterolemia, and hypertension.

10. He was evaluated by defendant Dr. Patrick Martinez, who ordered a blood test and urinary analysis. Dr. Martinez did not document a neurological evaluation. He did document that Mr. Carter had no other neurological symptoms other than those noted above.

11. Mr. Carter's blood pressure was 169/87, and his respiratory rate was 20. Mr. Carter did not have a fever.

12. His blood test results revealed an elevated Glucose and white blood cell count.

13. Mr. Carter's urine had traces of blood and positive bacteria result.

14. Dr. Martinez determined that Mr. Carter had a urinary tract infection. Dr. Martinez admitted Mr. Carter to the

is necessary to require the United States Government to certify the status of each provider involved in his care.

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1 hospital after apparently discussing the case with defendant
2 Dr. Carol Humphry.

3 15. Dr. Martinez treated Mr. Carter with zofran,
4 rocephin, and reglan to treat his nausea and diabetes.
5

6 16. A few hours after Mr. Carter was admitted to the
7 floor, Dr. Humphry evaluated him. She noted that Mr. Carter
8 was sedated, sleepy, uncooperative and did not "utter a word"
9 when she spoke to him despite opening his eyes. Dr. Humphry
10 also noted that Mr. Carter spoke to Dr. Martinez but did not
11 say much. Mr. Carter reported to the ER staff that he just
12 wanted to sleep and would only respond when pressed to answer.
13

14 17. Dr. Humphry did not document a neurological
15 examination. Instead she concurred with Dr. Martinez noting a
16 likely urinary tract infection.
17

18 18. Dr. Humphry next evaluated Mr. Carter on September 23
19 at 1:25 in the afternoon.
20

21 19. Dr. Humphry noted that Mr. Carter was still nauseated
22 and had a headache over the top of his head that he had been
23 experiencing since the day before. Mr. Carter reported that
24 the day before he had poor vision in his lateral field. He
25 went to work but could not coordinate his right arm and felt
26 his speech was not clear. Mr. Carter reported he also had
ringing in his left ear, and then the vomiting began. He could

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1 not walk because he was so weak. Dr. Humphry noted that his
2 right hand was slower and shaky compared to his left hand.

3 20. A CT scan was done the afternoon of September 23 that
4 showed multiple infarcts in the right posterior circulation,
5 with his right occipital focus having axial measurements of 5.0
6 x 2.7 cm, the larger right cerebellar lesion had an axial
7 measurement of 4.4 x 2.4 cm, with a smaller peripheral and more
8 inferior cerebellar lesion measuring 1.7 x 1.1 cm.

9 21. Dr. Humphry contacted defendant Dr. Brian Trimble at
10 the Alaska Native Medical Center ("ANMC") and reviewed the CT
11 results with him. Dr. Trimble advised that an immediate
12 transfer to ANMC was needed.

13 22. Mr. Carter was medivaced to ANMC on September 24.

14 23. Defendant Dr. Esther Lee admitted Mr. Carter. He was
15 well past the window of opportunity for thrombolytic therapy by
16 the time he arrived at ANMC. Dr. Lee noted that Mr. Carter had
17 been off his medication for both diabetes and blood pressure
18 for about a year. She noted that Mr. Carter had a left visual
19 field defect and full strength of the right upper and lower
20 extremities. Dr. Lee ordered a full work up to identify the
21 embolic source of Mr. Carter's stroke. She also ordered a
22 neurology consult with Dr. Trimble.

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1 24. Dr. Trimble evaluated Mr. Carter the following day on
2 September 25 in the morning. Dr. Trimble noted the partial
3 left field cut noted by Dr. Lee, but also found that Mr. Carter
4 had ataxia of the right arm and leg. Dr. Trimble noted these
5 deficits were consistent with the MRI findings of an acute
6 infarct involving the right cerebellum. Dr. Trimble concurred
7 with the work-up to determine the source of Mr. Carter's
8 stroke, including the echocardiogram, carotid duplex, and a CT
9 angiogram to check the integrity of the vertebral arteries.
10 This work-up was not complete when Dr. Trimble evaluated
11 Mr. Carter or dictated his report. Dr. Trimble noted a need
12 for a follow-up in one month.

13 25. Dr. Trimble did not review Mr. Carter's work-up once
14 it was done.

15 26. That work-up revealed a distal right vertebral artery
16 occlusion as well as a right posterior inferior cerebellar
17 artery occlusion.

18 27. Dr. Lee reviewed the results and noted this result as
19 a "relatively rare" condition. She noted that anticoagulation
20 was not initiated during hospitalization because of a very high
21 risk of hemorrhagic conversion to stroke. Dr. Lee discharged
22 Mr. Carter on September 26 with an order to take aspirin
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1 instead, follow up with Dr. Trimble in one month, and to follow
2 up with his primary care provider in 3-5 days.

3 || 28. Mr. Carter returned to Bethel.

4 29. The following day, on September 27, Mr. Carter
5 experienced new left sided numbness and vision changes.
6
7 Mr. Carter arrived in the emergency room at Yukon-Kuskokwim
8 Delta Regional Hospital within 15 minutes of the symptom onset.
9 While in the emergency room, Mr. Carter deteriorated and became
10 unresponsive.

11 30. Mr. Carter suffered a massive stroke on September 27.
12 He remains on life support as a result of that stroke.

COUNT II

Plaintiff re-alleges paragraphs 1 through 30 as if fully
set forth herein and further alleges as follows:

17 31. Dr. Patrick Martinez owed a duty to Mr. Carter to
18 assess, diagnose and treat him within the appropriate standard
19 of care and/or with the knowledge or skill ordinarily exercised
20 by medical doctors trained in the field of emergency medicine.

21 32. Dr. Patrick Martinez either lacked the degree of
22 knowledge or skill or failed to exercise the degree of care
23 ordinarily exercised by medical doctors trained in the field of
24 emergency medicine and was negligent and/or reckless in at
25 least the following ways: in failing to provide appropriate

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1 assessment, testing, treatment and follow up for Mr. Carter's
2 emergency room presentation on September 22, 2015.

3 33. As a direct and proximate cause of negligent and/or
4 reckless conduct as above alleged, Mr. Carter suffered
5 permanent disability, inconvenience, pain and suffering, past
6 and future economic loss, loss of enjoyment of life, and past
7
8 and future medical expenses.

COUNT II

10 Plaintiff re-alleges paragraphs 1 through 33 as if fully
11 set forth herein and further alleges as follows:

34. Dr. Carol Humphry owed a duty to Mr. Carter to assess, diagnose and treat him within the appropriate standard of care and/or with the knowledge or skill ordinarily exercised by medical doctors.

17 35. Dr. Carol Humphry either lacked the degree of
18 knowledge or skill or failed to exercise the degree of care
19 ordinarily exercised by medical doctors and was negligent
20 and/or reckless in at least the following ways: in failing to
21 provide appropriate assessment, testing, treatment and follow
22 up for Mr. Carter's presentation to Yukon-Kuskokwim Delta
23 Regional Hospital on September 22, 2015.

25 36. As a direct and proximate cause of negligent and/or
26 reckless conduct as above alleged, Mr. Carter suffered

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1 permanent disability, inconvenience, pain and suffering, past
2 and future economic loss, loss of enjoyment of life, and past
3 and future medical expenses.

4
COUNT III
5

6 Plaintiff re-alleges paragraphs 1 through 36 as if fully
7 set forth herein and further alleges as follows:

8 37. Dr. Esther Lee owed a duty to Mr. Carter to assess,
9 diagnose and treat him within the appropriate standard of care
10 and/or with the knowledge or skill ordinarily exercised by
11 medical doctors.

12 38. Dr. Esther Lee either lacked the degree of knowledge
13 or skill or failed to exercise the degree of care ordinarily
14 exercised by medical doctors and was negligent and/or reckless
15 in at least the following ways: in failing to provide
16 appropriate assessment, testing, treatment and follow up for
17 Mr. Carter's presentation to the Alaska Native Medical Center,
18 which led to Mr. Carter's stroke on September 27, 2015.

19 39. As a direct and proximate cause of negligent and/or
20 reckless conduct as above alleged, Mr. Carter suffered
21 permanent disability, inconvenience, pain and suffering, past
22 and future economic loss, loss of enjoyment of life, and past
23 and future medical expenses.

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COUNT IV

Plaintiff re-alleges paragraphs 1 through 39 as if fully set forth herein and further alleges as follows:

40. Dr. Brian Trimble owed a duty to Mr. Carter to assess, diagnose and treat him within the appropriate standard of care and/or with the knowledge or skill ordinarily exercised by medical doctors trained in the field of neurology.

41. Dr. Brian Trimble either lacked the degree of knowledge or skill or failed to exercise the degree of care ordinarily exercised by medical doctors trained in the field of neurology and was negligent and/or reckless in at least the following ways: in failing to provide appropriate assessment, testing, treatment and follow up for Mr. Carter's presentation to the Alaska Native Medical Center, which led to Mr. Carter's stroke on September 27, 2015.

42. As a direct and proximate cause of negligent and/or reckless conduct as above alleged, Mr. Carter suffered permanent disability, inconvenience, pain and suffering, past and future economic loss, loss of enjoyment of life, and past and future medical expenses.

WHEREFORE, plaintiff prays for relief as follows:

1. For compensatory damages, in excess of \$100,000.00, the exact amount to be proven at trial, including, but not

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1 limited to, severe pain and suffering, permanent disability,
2 inconvenience, past and future economic loss, loss of enjoyment
3 of life, and past and future medical expenses;

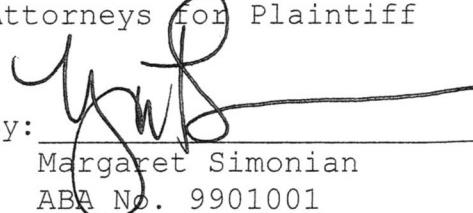
4 2. For costs, attorney's fees and pre-judgment interest;

5 and

6 3. For such other and further relief as the Court deems
7 just and proper.

8
9 DATED this 21st day of September 2017, at Anchorage,
10 Alaska.

11 DILLON & FINDLEY, P.C.
12 Attorneys for Plaintiff

13 By: 

14 Margaret Simonian
ABA No. 9901001

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